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No. 03-857

Supreme Court, U.S.
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In The
Supreme Court of the United States

R. VANKE, et al.,

Petitioners,

vs.

LEROY BACA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY TO BRIEF IN OPPOSITION

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INTRODUCTION

In *Martin v. Hadix*, 527 U.S. 343 (1999) (opinion by Justice O'Connor), this Court defined fully and conclusively the phrase "any action" as it is used in Section 1997e(d) of the Prison Litigation Reform Act of 1995 (the "PLRA"). In so doing, this Court made pellucid that the phrase "any action" as used in Section 1997e(d) means any action subject to that entire Section, 1997e, of which subsection 1997e(d) is but a part.

Specifically, this Court made clear that ***when*** actions in fact are subject to Section 1997e, then subsection 1997e(d) sets "substantive" limits on an award of attorneys' fees. But subsection 1997e(d) does ***not*** control when prison actions are subject to Section 1997e in the first instance, by the subsection's inclusion of the phrase "any action." The word "any" in the phrase "any action" means "any action that is subject to Section 1997e in the first instance." Because only prisoner cases involving prison conditions are subject to Section 1997e in the first place, therefore, because the instant action does not involve prison conditions in the first instance, therefore, this action is subject neither to Section 1997e nor to subsection 1997e(d).

As this Court held, "we believe that § 803(d) [codified at subsection 1997e(d)] is better read as setting substantive limits on the award of attorney's fees." *Martin*, 527 U.S. at 353. But, if an action is not subject to Section 1997e at all, as is the case here, then, by *modus ponens*, it is not subject to subsection 1997e(d) at all. Put another way, by *Martin's* reasoning, subsection 1997e(d) does not define which classes of cases are subject to Section 1997e, and for any prison case to be governed by subsection 1997e(d) it first must be subject to Section 1997e itself.

In doing that, this Court made clear that the subsection, 1997e(d), the attorneys' fees subsection of the entire section, 1997e, does ***not*** define the class of cases subject to Section 1997e(d) that are covered by the entire Section, 1997e.

In simple, the phrase "any action" as contained in Section 1997e(d) means any action subject to the entire section, 1997e, of which subsection 1997e(d) is but one part. But subsection 1997e(d) and its use of the phrase "any action" is not determinative of which cases are subject to subsection 1997e(d), or the entire Section, 1997e.

According to this Court, Section 1997e(d) applies to "any action" which already is subject to the main Section, 1997e, but that the subsection, 1997e(d), does not govern which actions are subject at all to Section 1997e. The provisions and construction of the entire Section 1997e do that.

Thus, this Court defined the phrase "any action" in its ordinary language sense, gave plain meaning to the statute as written, and interpreted that provision in light of the overall statutory scheme of the PLRA and the policies and purposes underlying the PLRA, which argument is made in the Petition herein.

ARGUMENT

This case involves the meaning of one word within a specific provision of the "PLRA." The issue in this case is whether it is within the class of cases governed by the PLRA, and specifically, whether the instant case is subject to the attorney fees limitation imposed by one subsection of the PLRA. In order to understand the meaning of the one word at issue in this case, "any," a sense of the breadth of the statutory scheme of which it is a part is helpful. The PLRA was the 1996 enactment of PL 104-134, 1996 HR 3019. It was a sweeping piece of legislation that included amendments to existing statutes and added new statutes. Section 803 of the PLRA amended 42 U.S.C. § 1997e, which addresses civil remedies for deplorable ***prison conditions***. Section 802 of the PLRA amended 18 U.S. § 3626, which governs the granting of and termination of injunctive relief in civil actions challenging ***prison conditions***. The PLRA also added new provisions, including a

"three-strikes" rule, in order to quell vexatious inmate litigants and broadened the courts' powers summarily to dismiss certain inmate civil actions. *See* 28 U.S.C. § 1915(g), added by § 804 of the PLRA.

At issue in this case is whether an award of attorneys' fees in this case is limited by Section 803(d) of the PLRA, which is codified at 42 U.S.C. § 1997e(d). Section 1997e(d) provides, in relevant part:

> (d) Attorney's Fees
>
> (1) In **any action brought by a prisoner who is confined** to any jail, prison, or other correctional facility, in which attorney's fees are authorized under [42 U.S.C. § 1988], such fees shall not be awarded, except to the extent that –
>
> (A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under [42 U.S.C. § 1988]; and
>
> (B)(i) the amount of the fee is proportionately related to the court ordered relief for the violation; or
>
> (ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.
>
> (2) Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.
>
> (3) No award of attorney's fees in an action described in paragraph (1) shall be based on an hourly rate greater than 150 percent of the hourly rate established under section 3006A of Title 18, [the Criminal Justice Act,] for payment of court-appointed counsel. 42 U.S.C. § 1997e(d) (herein referred to as § 803(d) or § 1997e[d]).

At issue in this case is the immediately preceding bolded phrase: **any action brought by a prisoner who is confined**. Respondent's argument is that the word "any," as it is used in § 803(d), codified at 42 U.S.C. § 1997e(d)(1), means "every." In *Martin*, the Court ruled that "all" does not mean "every." There, the Court determined to what extent § 803(d) of the PLRA applied to an award of attorneys' fees for work performed in a prison case both before and after the effective date of the Act. And, in deciding that issue, this Court defined the word "any," as used in § 1997e(d), to mean attorneys' fees incurred in prison condition cases that were filed before the effective date of the Act, and in which an entitlement to attorneys' fees was claimed for services rendered after the effective date of the Act, but not for services rendered prior to the effective date. Unlike this case, *Martin* involved prisoner lawsuits which challenged prison conditions. However, as in this case, the issue was the scope of § 803(d), and particularly the phrase "'[i]n *any* action *brought by a prisoner who* is *confined*[.]'" *Martin*, 527 U.S. at 352 (emphasis in original). At issue in *Martin*, as in issue in the instant case, was whether that phrase, particularly its use of the word "any," defined the class of cases subject to § 803(d). The Court rejected the argument posed by the respondent here that because "any" is a broad, encompassing word, § 803(d) applies to **all** prisoner actions, and specifically held that the fee limitations of § 803(d) did **not** apply to "*all* fee awards entered after the PLRA became effective." *Ibid.* (emphasis in original). The Court acknowledged that the "word 'any' is broad, [but ruled that] it *stretches the imagination to suggest that Congress intended, through the use of this* ***one*** *word, to make the fee limitations applicable to* ***all*** *fee awards. Id.* at 354 (emphases added).

This is dispositive of the issue on the instant petition.

Martin held that the phrase "any action" contained in § 1997e(d) does not define what cases are subject to the attorney fee limitations of that provision. 527 U.S. at 353-54. The Court held that § 1997e(d) only sets the conditions

on the recovery of attorneys' fees and the amount of recoverable attorneys' fees, but that that section does not establish what cases are subject to its limitations. *Ibid.* In reaching this conclusion, the Court defined the word "any" by reference to other words in § 803(d) of the PLRA and to other sections of the PLRA, specifically § 802, which is codified at 18 U.S.C. § 3236, and that governs injunctive relief in civil actions challenging prison conditions. Rejecting the broad meaning of "all" and declining to find that the word "all" meant "every," the Court held that the phrase "any action" as employed in § 1997e(d) did not define what actions are subject to that provision. Instead, when read in context, § 1997e(d) merely defines the limits on the recovery of amounts of attorneys' fees in the actions that ***are subject to that provision*** and makes those limits applicable to all cases that already are subject to that provision. *Id.* at 353-54. The Court gave meaning to the word "any." It did not ignore it. This Court properly construed subsection 1997e(d) as imposing attorneys fees limits on all cases subject to Section 1997e, and properly found that § 1997e(d), despite its use of the phrase "any action," ***did not define the class of cases within the words used in that subsection or the main Section, 1997e.*** Therefore, in this case, the Court properly should use the same approach in defining the scope of the word "any." The Court encountered no difficulty in limiting the scope of the word "any," and a similar analysis in this case would indicate that interpretation of the word "any" should be conducted in the same manner in this case.

Rather than interpreting the word "any" based on its inclusion in but one phrase of § 803(d), *i.e.*, in a vacuum apart from the rest of the statutory scheme, the Court interpreted the word "any" by reading that word in context with the remaining language of that Section, as well as by reference to other sections of the PLRA. In interpreting the word "any" in this manner, the Court found that § 803(d) did ***not*** apply to every prison case. *Martin*, 527 U.S. at 354. The Court found that § 1997e(d) did ***not*** define what actions were subject to that provision, but only defined what the limits on attorneys' fees are in

actions that are subject to § 1997e(d) and the PLRA. *Martin*, 527 U.S. at 353-54. Therefore, in this case, the word "any" properly should be interpreted as those prisoner lawsuits that successfully challenge ***prison conditions***. The word "any" properly does not mean every prisoner lawsuit, but means only cases properly governed by the PLRA that, in fact, actually have to do with ***prison conditions***. Because the instant case has nothing to do with prison conditions, therefore, the word "any" refers to PLRA cases and does not apply in this case. Properly interpreted, the word "any" in § 803(d) is not a reference to all cases filed by prisoners, but instead references only prisoner cases that involve prison conditions.

In *Martin*, the Court employed basic rules of statutory construction: no one word or phrase in a section of a statute may be read in a vacuum apart from the rest of that section or the PLRA because such a reading violates the canon of construction that "the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989). Read in its proper context, it is clear that § 803(d) does not apply to prisoner lawsuits which do not challenge prison conditions, notwithstanding the one particular seemingly all encompassing phrase relied on by the respondent, here. The word "any" must be read in its proper context. *See Martin*, 527 U.S. at 352-56. It must be read by looking at the rest of the language of the particular statute, as well as in context and consonance with the purpose and design of the statutory scheme of which it is apart, in this case, the PLRA.

Respondent does not and cannot quarrel with the District Court's finding in this case that the exhaustion requirement of the PLRA codified at § 1997e(a), did *not* apply to this case because this case is not a prison condition case. Respondent does not and cannot quarrel that this case is not a prison condition case. Rather, respondent contends that because the phrase "any action" is in a different subsection of the same section of the PLRA, to

wit, § 1997e(d), as opposed to § 1997e(a), it nonetheless applies to this case although it is not a prison condition case. Respondent's argument contravenes the requirement that the phrase "any action" as used in one subsection of the PLRA must be read in context with the purpose and policies of the PLRA, as well as the statutory scheme as a whole, as the Court held in *Martin.* When the phrase "any action" properly is read with reference to the PLRA's "full text, language as well as punctuation, structure and subject matter," *United States Nat'l Bank v. Independent Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993) (internal quotation marks omitted), and properly interpreted in light of not only to "the particular statutory language at issue, [but also] . . . the language and design of the statute as a whole," *K-Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988), it is clear that the attorneys' fees provision, § 1997e(d) does not apply to every prisoner lawsuit, but only those that challenge prison conditions. As this Court held in *Martin*, the phrase "any action" as used in § 1997e(d) does not define the class of cases subject to the attorney fee limitations imposed by that subsection. *Martin*, 527 U.S. at 353-54. Rather, § 1997e(d) applies to "any action" subject to its provisions. *See id.*

As explained in petitioner's opening brief, the language and design of the PLRA, a sweeping statutory scheme, as a whole, belies any contention that the phrase "any action" as used in one subsection of one statute which is a part of such a broad statutory scheme can be read without a view to the purposes of that statutory scheme. Petitioner has explained that the statutory scheme known as the PLRA was aimed at prisoner lawsuits which challenge prison conditions. A proper reading of the phrase "any action" which is contained in § 1997e(d) requires consideration of the context of the purposes and design of the PLRA. That purpose and design, as explained in the opening brief, was to curtail and to regulate prisoner lawsuits which challenge prison conditions. This case does not challenge prison conditions and therefore it is not governed at all by the PLRA. And, the phrase "any action"

which is contained in but one subsection of one statute of the statutory scheme of the PLRA is not determinative of whether this action is within the scope of the PLRA and the attorney fee limitations set forth at § 1997e(d). *See Martin*, 527 U.S. at 353-54.

Respondent's reliance on *Montcalm Publishing Corp. v. Commonwealth of Virginia*, 199 F.3d 168, 171 (4th Cir. 1999) is misplaced. Respondent suggests that the Fourth Circuit held that the phrase "any action" extends the scope of the attorneys' fees limitations set by § 1997e(d) to every action filed by a prisoner, even an action which does not challenge prison conditions. However, *Montcalm* involved an action brought by two prisoners which challenged prison conditions. "Unquestionably, the case at hand is one 'brought by a prisoner.' Indeed, two prisoners, Hodges and Flora, initiated this case; Montcalm merely intervened. Thus, application of [§1997e(d) of] the PLRA is inescapable." *Id.* at 172. Therefore, *Montcalm* is neither relevant or apposite to the issue before the Court because that case clearly involved a challenge to prison conditions which was initiated by prisoners. This case does not.

Similarly, each of the other cases relied on by respondent for the proposition that the word "any," as used in § 1997e(d), means "every" and, therefore, means that every action filed by a prisoner that is subject to the attorney fee limitations set forth in § 1997e(d), are inapposite because each of those cases involves a lawsuit which challenged ***prison conditions***. The citation of all of those cases begs the question in this case, because each of those cases assumes that the action falls within the PLRA because prison conditions were involved. *Waterman v. Farmer*, 84 F.Supp.2d 579 (D. N.J. 2000), involved a prisoner's right of access to pornography while in prison. *Green v. Peters*, 2002 U.S. Dist. LEXIS 11671 (N.D. Ill. 2002), cited by respondent, also involved a prisoner's right of access to various publications. *Turnev v. Schultz*, 130 F.Supp.2d 1216 (D. Co. 2001) involved the use of excessive

force by prison guards on a prisoner. These cases indisputably all are prisoner lawsuits filed to challenge prison conditions, precisely the type of cases subject to § 1997e, including the attorney fee limitations imposed by § 1997e(d). *See Martin*, 527 U.S. at 347 (access to vocational and educational opportunities, access to courts all are prison conditions); *id.* at 349 (mail, court access, sanitation, and other aspects of prison life); *Porter v. Nussle*, 534 U.S. 516 (2002) (isolated used of excessive force by a prison guard on a prisoner is a prison condition). Thus, all of these cases are not determinative of or even relevant on this issue in this case, to wit, whether the phrase "any action," as used in one subsection of a section of the PLRA, defines what lawsuits are within the scope of that entire Section.

Respondent's reliance on *Siripongs v. Davis*, 282 F.3d 755, 757 (9th Cir. 2002), is unavailing. *Siripongs* involved the issue of whether plaintiff had been a "prevailing party." Specifically, it involved the issue of whether the plaintiff was a prevailing party entitled to attorneys fees who, although he obtained a temporary restraining order preventing his execution, had been refused a preliminary injunction, and became the quintessential losing party when he was executed. Unlike the plaintiff in *Siripongs,* here, plaintiffs indisputably obtained a preliminary injunction enjoining the respondent from engaging in its unconstitutional practices, which were not prison conditions. Unlike anything that occurred in *Siripongs*, the respondent here changed its practices admittedly as a result of the preliminary injunction. Respondent claims that the action in *Siripongs* did not involve prison conditions. However, there, plaintiff had filed a lawsuit challenging the denial of his right of due access to clemency proceedings. *Siripongs*, 282 F.3d at 756-57. This Court has held that lawsuits challenging court access are prison condition cases. *See Martin*, 527 U.S. at 349. Therefore, *Siripongs* which involved an action challenging the denial of due process rights in a prisoner's petition for clemency involved a prisoner lawsuit which challenged prison

conditions and properly was subjected to the PLRA and its provision limiting recovery of attorneys fees in prison condition lawsuits.

Here, Section 1997e(d) is ***in***applicable at all because the instant action involved the fact of confinement, but it did not involve any condition of confinement or prison condition.

Moreover, plaintiffs did plead and prove the "actual violation of the plaintiff's rights," which Section 1997e(d)(1) makes a predicate for an award of fees in prisoner cases that do involve prison conditions, and thus, even if this Section were to apply, there is an entitlement to attorneys' fees.

CONCLUSION

Certiorari should be granted for the reasons set forth in the Petition, to resolve the important national question of whether or not the attorneys' fees provision contained in subsection 1997e(d) defines the entire scope of the main Section of which it is a part, Section 1997e, and is applicable to prisoner suits that do ***not*** involve prison conditions, and to bring the errant Ninth Circuit into conformity with the PLRA and this Court's and other court's PLRA holdings.

Alternatively, the court below should be summarily reversed. *See, e.g., City of Los Angeles v. Heller*, 475 U.S. 796 (1986).

Respectfully submitted,

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